

Internal Revenue Service

District Director

Department of the Treasury

P.O. Box 2508  
Cincinnati, OH 45201

*No protest received*

*6/21/94*

Person to Contact:

Telephone Number

Refer Reply to:  
EP/EO

Date: MAY 17 1994.

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

*5/2/94*

-2-

[REDACTED]

If we do not hear from you within the time specified, this will become our final determination.

[REDACTED]

District Director

Enclosures: 3

ENCLOSURE

[REDACTED]  
The information submitted indicates that you were incorporated on [REDACTED] in the State of [REDACTED]. You filed Form 1024, Application for Recognition of Exemption under Section 501(a) of the Internal Revenue Code on [REDACTED].

The Articles of Incorporation state that the specific purposes for which the organization was formed are to promote the health, safety and welfare of the residents of [REDACTED]..., to own and to regulate the use of and maintain the common open space..., etc.

The Bylaws provide that all owners shall be members of your organization. Your Form 1024 application indicates two classes of members, home or lot owners which have 1 vote per lot and the developer which has 10 votes per lots. Based on the number of lots owned, the owners have [REDACTED] votes and the developer has [REDACTED] votes.

Your application Form 1024 states that your organization conducts the following activities:

"To own and maintain all common area for the community. This includes the community's privately owned streets and park areas. Maintenance includes upkeep, improvements and routine care of the streets and common areas, such as snow plowing and mowing.

The Association also enforces all the covenants, conditions and restrictions which apply to the community."

Your membership is not open to the general public. You own and maintain roadways, sidewalks, or streetlights, parklands and playgrounds. You indicated that the roadways and sidewalks are accessible to the general public; however, the parklands and playgrounds are not.

The financial data submitted indicates that your sole source of support is gross dues and assessments of members and that all expenses are attributable to activities related to the organization's purpose.

Section 1.501(c)(4)-1(a)(1) of the Income Tax Regulations states that a civic league or organization may be exempt if:

- (i) It is not operated for profit; and
- (ii) It is operated exclusively for the promotion of social welfare.

ENCLOSURE

[REDACTED]

Section 501(c)(4)-(1)(a)(2) of the Regulations states in general that:

- (i) an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements.
- (ii) the promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to an organizations which are operated for profit.

Specifically, under section 501(c)(4), a homeowners' association must operate for the benefit of the general public, i.e., it must provide a community benefit. Our position regarding the exemption of homeowners' associations under section 501(c)(4) is set forth in a number of revenue rulings.

Revenue Ruling 74-99, 1974-2 C.B. 131, describes the circumstances in which a homeowners' association may qualify for exemption under section 501(c)(4) of the Internal Revenue Code. The ruling states that three elements must be satisfied:

- 1) It must serve a "community" that bears a reasonably recognizable relationship to an area ordinarily identified as governmental;
- 2) it must not conduct activities directed to the exterior maintenance of private residences and,
- 3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

The ruling also states that a "community", within the meaning of section 501(c)(4) of the Code, is not merely "an aggregation of homeowners bound together in a structured unit formed as an integral part of a plan for the development of a real estate subdivision and the sale and purchases of homes therein."

ENCLOSURE

[REDACTED]

Revenue Ruling 80-63, 1980-1 C.B. 116, addresses pertinent questions as to whether the conduct of certain activities will affect the exempt status under section 501(c)(4) of the Code or otherwise qualifying homeowners' association. The ruling states that:

- 1) the term "community" does not embrace a minimum area or a certain number of homeowners,
- 2) a homeowners' association may not receive an exemption if it represents an area that is not a community and it restricts the use of its recreational facilities to only members of the association,
- 3) an affiliated recreational organization operated totally separate from the homeowners' association may be exempt so long as there is no benefit flowing back to member, and
- 4) a homeowners' association cannot own and maintain parking for the sole use of its members if it is not a community.

Based on the above facts and upon the applicable law and precedent, [REDACTED] fails to qualify for exemption under section 501(c)(4) of the Code because your organization restricts common areas for use by members only and the areas are not available to the community in which you are located. In this respect, you are similar to the organizations denied exemption in Rev. Rul. 74-99, 1974-1 C.B. 131 and Rev. Rul. 80-63, 1980-1 C.B. 116.